In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1039

LOCAL 300, UNITED INDUSTRIAL WORKERS OF AMERICA, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO, PETITIONER

v.

MARRIOTT IN-FLITE SERVICES DIVISION OF MARRIOTT CORPORATION AND NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. The Board found that the Company violated Section 8(a)(5) of the National Labor Relations Act by refusing to bargain with petitioner which, after a Board election, had been certified as the representative of the Company's flight kitchen employees at O'Hare Airport in Chicago. The Company challenged the certification because, *inter alia,* Spanish language ballots had not been provided. At a pre-election conference, both the Union and the Company had asked that

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the Board's Regional Director provide Spanish language ballots since about one-third of the electorate was Spanish speaking. The Director subsequently distributed and posted notices of election in Spanish as well as in English, with the sample ballot on each notice written in English; at the election only English language ballots were available. The Union won the election. The Board overruled the Company's contention that the lack of Spanish language ballots tainted the election results, noting that Spanish speaking observers were present at the election and neither they nor any employee had indicated that there was any misunderstanding respecting the ballot, which merely required a simple "yes" or "no" vote. Moreover, the English language ballot was explained by the election notices, which were written in both Spanish and English. (Pet. App. A19–A20, n. 4.)

2. The court below refused to enforce the Board's order on the ground that "[a]n election in which one-third of the electorate has no access to ballots in language that it can understand necessarily falls below the minimum laboratory standards of fairness" (Pet. App. A10). The court noted that evidence introduced in the representation proceeding indicated that at least 18 other Board regional offices follow a policy of making foreign language ballots available when a substantial language problem is presented, and that the Board's Associate Executive Secretary had stated, in response to a Company inquiry, that this was the Board's general policy (Pet. App. A4–A6).

3. The Board agrees with petitioner that the court below, in overturning the Board's determination that the lack of foreign language ballots did not warrant a setting aside of the election here, failed to give due weight to the principle that "Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives * * *" (*National Labor Relations Board* v. *A. J. Tower Co.*, 329 U.S. 324, 330). However, as the court below noted, the Board's general policy is to provide foreign language ballots in similar circumstances. Moreover, the region involved here has subsequently used foreign language ballots in such situations (J.A. 170, 172).[1] In these circumstances, the Board does not believe that the present case presents an issue of sufficient importance in the administration of the Act to warrant further review.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel.

FEBRUARY 1970.

[1] "J.A." refers to the joint appendix filed in the court below.

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